



June 9, 1999

Ms. Laura P. Gordon
Trial Section Supervisor
Office of the City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR99-1603

Dear Ms. Gordon:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124938.

The City of El Paso (the "city") received a request for a copy of a report concerning an injury. You assert that the report at issue is protected from disclosure under section 552.103(a) of the Government Code. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.), *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

Litigation has been found to be reasonably anticipated when an individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 at 2 (1990). This office has found that litigation was not reasonably anticipated when an applicant who was rejected for employment hired an attorney, and the attorney as part of his investigation asked for information as to why his client was rejected. Open Records Decision No. 361 (1983). We believe that, based on the correspondence provided this office, you have shown that litigation is reasonably anticipated.¹ Open Records

¹You state that the city has not received notice in compliance with the notice provisions of the Texas Tort Claims Act and also cite to Open Records Decision No. 638 (1996). In Open Records Decision No. 638 (1996), this office concluded that a governmental body could show that litigation is reasonably anticipated if it has received a claim letter and also represents to this office that the letter is in compliance with the notice requirements of the Texas Tort Claims Act. In this situation, the city has shown by other means that it reasonably anticipates litigation.

Decision No. 518 at 5 (1989) (governmental body must show that litigation involving a specific matter is realistically contemplated). A review of the submitted report shows that it is related to the subject of the anticipated litigation. Thus, the report may be withheld from disclosure under section 552.103(a). In making this determination, we assume the opposing party in the anticipated litigation has not had access to the report. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124938

Encl. Submitted documents

cc: Mr. James D. Lucas
Attorney at Law
303 Texas Avenue, Suite 806
El Paso, Texas 79901
(w/o enclosures)